

STATE OF ALASKA  
v.  
DANIEL JIMMIE  
BERTHA A. WILLIAMS

IBLA 79-535, 79-536

Decided July 11, 1980

Appeal from decisions of Alaska State Office, Bureau of Land Management, holding Native allotment applications F-207051, A-055656 for approval and rejecting State selection applications F-026811, A-053268.

Set aside and remanded.

1. Alaska: Land Grants and Selections: Generally --  
Alaska: Native Allotments -- Appeals -- Contests and  
Protests: Generally -- Rules of Practice: Government  
contests -- Rules of Practice: Private Contests

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

APPEARANCES: Barbara J. Miracle, Esq., Assistant Attorney General, and Shelley J. Higgins, Esq., for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The State of Alaska appeals from two decisions of the Alaska State Office, Bureau of Land Management (BLM), dated June 20, 1979, and June 27, 1979, holding for approval Native allotment applications made pursuant to the Act of May 17, 1906, 34 Stat. 197, as amended (hereinafter the Alaska Native Allotment Act), and holding for rejection State selections made pursuant to the Alaska Statehood Act, 72 Stat. 339, as amended, 48 U.S.C. Chap. 2 (1976) to the extent of any conflict with the allotment applications. 1/

The State was given 30 days from receipt of the decisions to initiate a private contest, pursuant to 43 CFR 4.450, challenging the applicant's compliance with the use and occupancy provisions of the Alaska Native Allotment Act. Under the decisions, failure to initiate a private contest would "result in the Native allotment being approved and the State selection being rejected" to the extent of any conflict. The decisions noted that "this action will become final without further notice."

The BLM decisions also contained a standard appeals paragraph which provides that in accordance with the regulations in 43 CFR 4.400, the State of Alaska has the right of appeal to the Board of Land Appeals. The State of Alaska filed an appeal with this Board. In its statement of reasons, the State notes that BLM did not inform it of the Native allotment applications nor did it send the State any copies of documents or proofs filed in the cases. The State did not know that allotment applications had been filed for State selected land until it received mailed copies of BLM decisions rejecting the selections in favor of the Native allotment applications. The State also points to the fact that in these cases the Natives were given years to substantiate their claims, and that BLM took years to determine the validity of the claims. By contrast, the State notes that it was given barely 30 days in which to initiate a contest.

[1] The State of Alaska appealed to this Board within the 30 days in which it could initiate a private contest. However, the

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1/ The two cases listed below have been consolidated for the purpose of this appeal. The allotment applications and State selections involved in each are as follows:

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|--------------------|------------------|
| Bertha A. Williams | Daniel Jimmie    |
| A-055656           | F-027051         |
| Native Allotment   | Native Allotment |
| A-053268           | F-026811         |
| State Selection    | State Selection  |

decisions appealed from were interlocutory in nature and not subject to appeal at that time. State of Alaska v. John, 46 IBLA 137 (1980); State of Alaska, 42 IBLA 94 (1979); State of Alaska, 41 IBLA 309 (1979). Upon notification by BLM in its decisions that it intends to grant the Native allotment and reject the State selection to the extent of any conflict, the State of Alaska is required to make an election of remedies. It may initiate a private contest within the terms of the decisions; or it may permit the decisions to become final waiving its right to bring a private contest and appeal to this Board for a determination whether a Government contest complaint should issue against the allotment claim. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular. See State of Alaska v. David, 46 IBLA 177 (1980); State of Alaska v. John, *supra*; State of Alaska, 42 IBLA 94 (1979); State of Alaska, 41 IBLA 309 (1979).

We agree with the State that 30 days is not an adequate amount of time for initiating a contest complaint. In the future, BLM should allow the State 60 days from receipt of BLM's decision in which to initiate a private contest. However, in these cases, the State has already been aware of the Native allotment claims since it received copies of BLM's decisions which were issued on June 20, 1979, and June 27, 1979. Therefore, in this instance, we will set aside the original decisions and afford the State a period of 35 days from receipt of this decision in which to file a private contest complaint. At the expiration of 35 days, if no contest complaint has been filed, the decisions of BLM will become final and the State may take a timely appeal to the Board directed solely to the question of whether a Government contest complaint should issue.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1, the decisions appealed from are set aside and remanded for further action consistent herewith.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Frederick Fishman  
Administrative Judge

